

111TH CONGRESS  
1ST SESSION

# S. 394

To amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2009

Mr. SCHUMER (for himself and Mr. CRAPO) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Art and Collectibles  
5       Capital Gains Tax Treatment Parity Act”.

1 **SEC. 2. CAPITAL GAINS TREATMENT FOR ART AND COL-**  
 2 **LECTIBLES.**

3 (a) IN GENERAL.—Section 1(h) of the Internal Rev-  
 4 enue Code of 1986 (relating to maximum capital gains  
 5 rate) is amended by striking paragraphs (4) and (5) and  
 6 inserting the following new paragraphs:

7 “(4) 28-PERCENT RATE GAIN.—For purposes of  
 8 this subsection, the term ‘28-percent rate gain’  
 9 means the excess (if any) of—

10 “(A) section 1202 gain, over

11 “(B) the sum of—

12 “(i) the net short-term capital loss,  
 13 and

14 “(ii) the amount of long-term capital  
 15 loss carried under section 1212(b)(1)(B) to  
 16 the taxable year.

17 “(5) RESERVED.—”.

18 (b) EFFECTIVE DATE.—The amendment made by  
 19 this section shall apply to taxable years beginning after  
 20 December 31, 2008.

21 **SEC. 3. CHARITABLE CONTRIBUTIONS OF CERTAIN ITEMS**  
 22 **CREATED BY THE TAXPAYER.**

23 (a) IN GENERAL.—Subsection (e) of section 170 of  
 24 the Internal Revenue Code of 1986 (relating to certain  
 25 contributions of ordinary income and capital gain prop-

erty) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOLARLY COMPOSITIONS.—

“(A) IN GENERAL.—In the case of a qualified artistic charitable contribution—

“(i) the amount of such contribution taken into account under this section shall be the fair market value of the property contributed (determined at the time of such contribution), and

“(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

“(B) QUALIFIED ARTISTIC CHARITABLE CONTRIBUTION.—For purposes of this paragraph, the term ‘qualified artistic charitable contribution’ means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

“(i) such property was created by the personal efforts of the taxpayer making

1 such contribution no less than 18 months  
2 prior to such contribution,

3 “(ii) the taxpayer—

4 “(I) has received a qualified ap-  
5 praisal of the fair market value of  
6 such property in accordance with the  
7 regulations under this section, and

8 “(II) attaches to the taxpayer’s  
9 income tax return for the taxable year  
10 in which such contribution was made  
11 a copy of such appraisal,

12 “(iii) the donee is an organization de-  
13 scribed in subsection (b)(1)(A),

14 “(iv) the use of such property by the  
15 donee is related to the purpose or function  
16 constituting the basis for the donee’s ex-  
17 emption under section 501 (or, in the case  
18 of a governmental unit, to any purpose or  
19 function described under section 501(c)),

20 “(v) the taxpayer receives from the  
21 donee a written statement representing  
22 that the donee’s use of the property will be  
23 in accordance with the provisions of clause  
24 (iv), and

1 “(vi) the written appraisal referred to  
 2 in clause (ii) includes evidence of the ex-  
 3 tent (if any) to which property created by  
 4 the personal efforts of the taxpayer and of  
 5 the same type as the donated property is  
 6 or has been—

7 “(I) owned, maintained, and dis-  
 8 played by organizations described in  
 9 subsection (b)(1)(A), and

10 “(II) sold to or exchanged by  
 11 persons other than the taxpayer,  
 12 donee, or any related person (as de-  
 13 fined in section 465(b)(3)(C)).

14 “(C) MAXIMUM DOLLAR LIMITATION; NO  
 15 CARRYOVER OF INCREASED DEDUCTION.—The  
 16 increase in the deduction under this section by  
 17 reason of this paragraph for any taxable year—

18 “(i) shall not exceed the artistic ad-  
 19 justed gross income of the taxpayer for  
 20 such taxable year, and

21 “(ii) shall not be taken into account in  
 22 determining the amount which may be car-  
 23 ried from such taxable year under sub-  
 24 section (d).

“(D) ARTISTIC ADJUSTED GROSS IN-  
COME.—For purposes of this paragraph, the  
term ‘artistic adjusted gross income’ means  
that portion of the adjusted gross income of the  
taxpayer for the taxable year attributable to—

“(i) income from the sale or use of  
property created by the personal efforts of  
the taxpayer which is of the same type as  
the donated property, and

“(ii) income from teaching, lecturing,  
performing, or similar activity with respect  
to property described in clause (i).

“(E) PARAGRAPH NOT TO APPLY TO CER-  
TAIN CONTRIBUTIONS.—Subparagraph (A) shall  
not apply to any charitable contribution of any  
letter, memorandum, or similar property which  
was written, prepared, or produced by or for an  
individual while the individual is an officer or  
employee of any person (including any Govern-  
ment agency or instrumentality) unless such  
letter, memorandum, or similar property is en-  
tirely personal.

“(F) COPYRIGHT TREATED AS SEPARATE  
PROPERTY FOR PARTIAL INTEREST RULE.—In  
the case of a qualified artistic charitable con-

1           tribution, the tangible literary, musical, artistic,  
2           or scholarly composition, or similar property  
3           and the copyright on such work shall be treated  
4           as separate properties for purposes of this para-  
5           graph and subsection (f)(3).”.

6           (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to contributions made after the  
8 date of the enactment of this Act in taxable years ending  
9 after such date.

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